

**CITY OF OAKLAND**  
**AGENDA REPORT**

2009 OCT 15 PM 3:18

TO: Office of the City Administrator  
ATTN: Dan Lindheim  
FROM: Department of Human Resources Management  
DATE: October 27, 2009

RE: **A CalPERS Resolution of Intention and Ordinance Of The City Of Oakland To Approve An Amendment To The Contract Between The City Of Oakland And The Board Of Administration Of The California Public Employees' Retirement System (CalPERS) That Provide 1) Service Credit For Prior Federal Or State Firefighting In A Position Whose Principal Duties Consist Of Active Fire Suppression Or Law Enforcement And In Which That Service Was Terminated As A Direct Consequence Of the Closure, Downsizing, Or Realignment Of A Federal Military Instillation, In Accordance With Government Code Section 21024.5 And 2) Local Fire Members To Share The Cost Of The Three Percent At Fifty (3% @ 50) Retirement Formula At The Rate Of Four Percent (4%) Of The City's Contribution, In Accordance With Government Code Section 20516**

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**SUMMARY**

A Resolution and an Ordinance have been prepared to amend the contract between the City of Oakland and the California Public Employees' Retirement System (CalPERS) to implement two new benefits authorized by the Council in the current Memorandum of Understanding between the City and the International Association of Firefighters (Local 55).

The contract amendment to authorize Government Code Section 20516 will allow members of Local 55 to have the additional contribution they are already making to share the cost of additional retirement benefits officially recognized by CalPERS. Local 55 members currently share the cost of the 3% at 50 retirement benefit at a rate of four percent (4%) per month in addition to their nine percent (9%) employee member contribution for a total of thirteen percent (13%). The second amendment authorizing Government Code Section 21024.5 will allow members of Local 55 to purchase service credit for time worked as a permanent career civilian federal firefighter or permanent career state firefighter in a position whose principal duties consist of active fire suppression or law enforcement and that service was terminated as a direct consequence of the closure, downsizing, or realignment of a federal military installation.

Item: \_\_\_\_\_  
Finance and Management Committee  
October 27, 2009

## **FISCAL IMPACT**

### **Section 20516 – Employee Sharing Cost of Additional Benefits**

This benefit allows a contracting agency to share the cost of additional retirement benefits with the employees as a result of a written agreement with the employee group.

#### **Member Cost**

Members of Local 55 negotiated and have been paying an additional member contribution above the required nine percent (9%) since July 1, 2001. However, the additional contributions have not been recognized by CalPERS because there was no official amendment to the CalPERS contract to approve cost sharing under Section 20615. As a result, the additional contributions being made were not credited to the members' CalPERS accounts. Instead, the additional contributions were re-deposited to the City offsetting the amount being paid to CalPERS on behalf of safety members for the three percent at fifty (3% @ 50) retirement formula. The current additional contribution is four percent (4%).

As a result of the requested contract amendment, the 4% contributions will be credited to Local 55 members' accounts as normal contributions and will be included in the refund of accumulated contributions to members who separate from CalPERS covered employment and elect to withdraw their contributions. The additional contributions do not impact final compensation upon retirement. Credit for the increased member contributions will be credited to Local 55 members' accounts as of the effective date of the contract amendment.

#### **Employer Cost**

No valuation was required since one was done when the retirement formula of three percent at fifty (3% @ 50) was adopted and the cost for the benefit is already included in the City's CalPERS normal cost rate for safety employees annually. This fiscal year, the employer normal cost for safety members is 27.448% of payroll. The City only pays 23.448% and union members pick up 4% after the contract amendment. However, there will be a small increase in the employer rate to cover the return of contribution liability that will exist. According to CalPERS, the amount cannot be determined at this time.

### **Section 21024.5 – Public Service Credit for Permanent Career Civilian Federal Firefighter or Permanent Career State Firefighter Service**

This benefit will allow local firefighter members to purchase service credit for any service as a permanent career civilian federal firefighter or permanent career state firefighter prior to becoming a member of CalPERS.

### **Member Cost**

Individual calculation is required and may be obtained by the member by contacting CalPERS Member Services. The amount that members pay is only approximately one-half of the actual value of the service credit. Members who meet the eligibility criteria to purchase service credit under this provision are required to pay the normal employee contributions based on the contribution rate and compensation at date of membership plus interest until the date of completion of payments.

### **Employer Cost**

Actual employer costs for service credit purchases will emerge in future valuations. Because the amount that the member pays is only approximately one-half of the actual value of the service credit, the City will incur an additional cost every time a member purchases service under this option. The increase in employer cost will be paid through an increase in the employer contribution rate, beginning with the first of the fiscal year two years after the purchase. A survey was conducted to determine possible impact. The results show fewer than five Local 55 members who appear to meet eligibility criteria.

### **BACKGROUND**

On July 28, 2009, the City Council approved the Memorandum of Understanding with the International Association of Firefighters Local 55. Article 9, Section 9.3.7 of the Local 55 MOU states:

*Upon notification by Local 55 that its members have ratified this Agreement, the City shall begin the process to amend its contract with PERS to adopt the credit for prior public service described in and provided for by Government Code Section 21024.5. The benefit will be effective upon CalPERS approval.*

Article 9, Section 9.4 states in part:

*As permitted by Section 414(h)(2) and Government Code Section 20516 each unit member shall pay through payroll deductions 4.0% of the employer's contribution.*

Both of the aforementioned provisions require that the contract with CalPERS be amended and become effective upon adoption by the City Council and approval by CalPERS.

### **KEY ISSUES AND IMPACTS**

Article 9, Section 9.4 of the Local 55 MOU was developed to formally recognize the additional contribution being made by Local 55 members since July 1, 2001 to offset the cost of the 3% at 50 retirement formula. The 4% additional contribution currently being paid will now be recognized by CalPERS which was not the case prior to this contract amendment.

Article 9, Section 9.3.7 of the Local 55 MOU will allow firefighters who previously served as civilian firefighters on federal military installations that were closed, downsized or realigned to enhance their service credit with the City of Oakland by purchasing their service credit at a reduced cost.

There is no notable impact as a result of the proposed contract amendment at this time.

### **SUSTAINABLE OPPORTUNITIES**

There are no economic, environmental, or social equity opportunities resulting from this action.

### **DISABILITY AND SENIOR CITIZEN ACCESS**

The proposed action does not impact disability and senior citizen access.

### **RECOMMENDATION(S) AND RATIONALE**

Staff recommends that the City Council approve the resolution and ordinance amending the contract with CalPERS to allow Local 55 members to 1) purchase service credit for prior federal or state firefighting in a position whose principal duties consist of active fire suppression or law enforcement and that service was terminated as a direct consequence of the closure, downsizing, or realignment of a federal military installation in accordance with Government Code Section 21024.5 and 2) local fire members to share the cost of the three percent at fifty (3% @ 50) retirement formula at the rate of four percent (4%) in accordance with Government Code Section 20516.

**ACTION REQUESTED OF THE CITY COUNCIL**

Staff recommends that the City Council approve the resolution and ordinance amending the Contract with CalPERS to add Government Code Sections 20516 and 21024.5.

Respectfully submitted,



Wendell Pryor, Director  
Department of Human Resources Management

Prepared by:  
Yvonne S. Hudson, HR Manager  
Retirement and Benefits

APPROVED AND FORWARDED TO THE FINANCE AND MANAGEMENT COMMITTEE:

  
OFFICE OF THE CITY ADMINISTRATOR

Item: \_\_\_\_\_  
Finance and Management Committee  
October 27, 2009

**RESOLUTION OF INTENTION  
TO APPROVE AN AMENDMENT TO CONTRACT  
BETWEEN THE  
BOARD OF ADMINISTRATION  
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM  
AND THE  
CITY COUNCIL  
CITY OF OAKLAND**

WHEREAS, the Public Employees' Retirement Law permits the participation of public agencies and their employees in the Public Employees' Retirement System by the execution of a contract, and sets forth the procedure by which said public agencies may elect to subject themselves and their employees to amendments to said Law; and

WHEREAS, one of the steps in the procedures to amend this contract is the adoption by the governing body of the public agency of a resolution giving notice of its intention to approve an amendment to said contract, which resolution shall contain a summary of the change proposed in said contract; and

WHEREAS, the following is a statement of the proposed change:

To provide Section 21024.5 (Public Service Credit for Permanent Career Civilian Federal Firefighter or Permanent Career State Firefighter Service) and Section 20516 (4% Employees Sharing Cost of Additional Benefits) Applicable to Section 21362.2 (3% @ 50 Full formula) for local fire members.

NOW, THEREFORE, BE IT RESOLVED that the governing body of the above agency does hereby give notice of intention to approve an amendment to the contract between said public agency and the Board of Administration of the Public Employees' Retirement System, a copy of said amendment being attached hereto, as an "Exhibit" and by this reference made a part hereof.

By: \_\_\_\_\_  
Presiding Officer

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date adopted and approved



## EXHIBIT

California  
Public Employees' Retirement System



# AMENDMENT TO CONTRACT

Between the  
Board of Administration  
California Public Employees' Retirement System  
and the  
City Council  
City of Oakland



The Board of Administration, California Public Employees' Retirement System, hereinafter referred to as Board, and the governing body of the above public agency, hereinafter referred to as Public Agency, having entered into a contract effective September 1, 1970, and witnessed June 5, 1972, and as amended effective April 9, 1973, October 4, 1975, January 10, 1976, July 1, 1976, July 4, 1981, July 30, 1983, December 6, 1985, January 1, 1988, June 30, 1992, September 25, 1993, July 1, 1996, June 14, 2000, July 7, 2001, October 13, 2001, June 21, 2003, June 19, 2004, July 2, 2005 and June 3, 2009 which provides for participation of Public Agency in said System, Board and Public Agency hereby agree as follows:

- A. Paragraphs 1 through 19 are hereby stricken from said contract as executed effective June 3, 2009, and hereby replaced by the following paragraphs numbered 1 through 19 inclusive:
  1. All words and terms used herein which are defined in the Public Employees' Retirement Law shall have the meaning as defined therein unless otherwise specifically provided. "Normal retirement age" shall mean age 55 for local miscellaneous members and age 50 for local safety members.

PLEASE DO NOT SIGN "EXHIBIT ONE"

2. Public Agency shall participate in the Public Employees' Retirement System from and after September 1, 1970 making its employees as hereinafter provided, members of said System subject to all provisions of the Public Employees' Retirement Law except such as apply only on election of a contracting agency and are not provided for herein and to all amendments to said Law hereafter enacted except those, which by express provisions thereof, apply only on the election of a contracting agency.
  
3. Public Agency agrees to indemnify, defend and hold harmless the California Public Employees' Retirement System (CalPERS) and its trustees, agents and employees, the CalPERS Board of Administration, and the California Public Employees' Retirement Fund from any claims, demands, actions, losses, liabilities, damages, judgments, expenses and costs, including but not limited to interest, penalties and attorneys fees that may arise as a result of any of the following:
  - (a) Public Agency's election to provide retirement benefits, provisions or formulas under this Contract that are different than the retirement benefits, provisions or formulas provided under the Public Agency's prior non-CalPERS retirement program.
  - (b) Public Agency's election to amend this Contract to provide retirement benefits, provisions or formulas that are different than existing retirement benefits, provisions or formulas.
  - (c) Public Agency's agreement with a third party other than CalPERS to provide retirement benefits, provisions, or formulas that are different than the retirement benefits, provisions or formulas provided under this Contract and provided for under the California Public Employees' Retirement Law.
  - (d) Public Agency's election to file for bankruptcy under Chapter 9 (commencing with section 901) of Title 11 of the United States Bankruptcy Code and/or Public Agency's election to reject this Contract with the CalPERS Board of Administration pursuant to section 365, of Title 11, of the United States Bankruptcy Code or any similar provision of law.
  - (e) Public Agency's election to assign this Contract without the prior written consent of the CalPERS' Board of Administration.



PLEASE DO NOT SIGN "EXHIBIT C"

- (f) The termination of this Contract either voluntarily by request of Public Agency or involuntarily pursuant to the Public Employees' Retirement Law.
  - (g) Changes sponsored by Public Agency in existing retirement benefits, provisions or formulas made as a result of amendments, additions or deletions to California statute or to the California Constitution.
4. Employees of Public Agency in the following classes shall become members of said Retirement System except such in each such class as are excluded by law or this agreement:
- a. Local Fire Fighters hired for the first time as Fire Fighters on or after July 1, 1976 and those Fire Fighters prior to July 1, 1976 who waived their rights as of October 13, 2001.
  - b. Local Police Officers hired for the first time as police Officers on or after July 1, 1976 and those Police Officers prior to July 1, 1976 who waived their rights as of June 21, 2003.
  - c. Employees other than local safety members (herein referred to as local miscellaneous members).
5. In addition to the classes of employees excluded from membership by said Retirement Law, the following classes of employees shall not become members of said Retirement System:
- a. **MISCELLANEOUS EMPLOYEES, OTHER THAN ELECTIVE OFFICERS WHO ENTERED PUBLIC AGENCY SERVICE PRIOR TO SEPTEMBER 1, 1970 AND WHO HAVE NOT EXECUTED AND FILED, IN ACCORDANCE WITH RESOLUTIONS OF THE CITY COUNCIL A WAIVER OF RIGHTS UNDER THE OAKLAND MUNICIPAL EMPLOYEES' RETIREMENT SYSTEM PRIOR TO SEPTEMBER 1, 1970, OR IN THE PERIODS FEBRUARY 15, 1973 THROUGH MARCH 15, 1973, INCLUSIVE, OR NOVEMBER 24, 1975 THROUGH DECEMBER 19, 1975, INCLUSIVE, OR MAY 15, 1981 THROUGH JUNE 15, 1981, INCLUSIVE. THE EXCLUSION OF A MEMBER EXECUTING AND FILING SUCH WAIVER IN THE PERIOD MAY 15, 1981, THROUGH JUNE 15, 1981, INCLUSIVE, SHALL CEASE AND HIS MEMBERSHIP SHALL BE EFFECTIVE ON JULY 4, 1981 AND THOSE EMPLOYEES WHO DID NOT WAIVE THEIR RIGHTS AS OF JUNE 19, 2004;**

PLEASE DO NOT SIGN "EXHIBIT C."

- b. THE PROVISION OF PARAGRAPH 5.a. SHALL ALSO APPLY TO INDIVIDUALS HIRED PRIOR TO SEPTEMBER 1, 1970 WHO TERMINATED EMPLOYMENT WITH THE PUBLIC AGENCY, LEFT CONTRIBUTIONS ON DEPOSIT WITH OAKLAND MUNICIPAL EMPLOYEES' RETIREMENT SYSTEM, AND ARE MEMBERS OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM;
- c. THE PROVISION OF PARAGRAPH 5.a. SHALL NOT APPLY TO EMPLOYEES OF PUBLIC AGENCY HIRED AFTER JULY 4, 1981, AS TO FUTURE SERVICE. SUCH EMPLOYEES MAY EXECUTE A WAIVER OF RIGHTS UNDER THE OAKLAND MUNICIPAL EMPLOYEES' RETIREMENT SYSTEM WITHIN 30 DAYS OF NOTICE BY LOCAL AGENCY OF RIGHT TO EXECUTE A WAIVER AND WILL RECEIVE SERVICE CREDIT IN THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM FOR LOCAL SYSTEM SERVICE UPON PAYMENT OF CONTRIBUTIONS WITHDRAWN FROM THE LOCAL SYSTEM UNDER THE PROVISIONS OF GOVERNMENT CODE SECTION 20523 OR UPON TRANSFER OF MEMBER CONTRIBUTIONS FROM THE LOCAL SYSTEM UNDER THE PROVISIONS OF GOVERNMENT CODE SECTION 20530;
- d. MEMBERS OF BOARDS AND COMMISSIONS APPOINTED BY THE MAYOR OR THE CITY COUNCIL;
- e. EMPLOYEES AND MEMBERS OF THE BOARD OF EDUCATION;
- f. PERSONS EMPLOYED ON PROVISIONAL APPOINTMENTS, PURSUANT TO CITY OF OAKLAND CHARTER SECTION 803, OTHER THAN CITY OF OAKLAND EMPLOYEES WHO ARE MEMBERS OF PERS AND ACCEPT SUCH APPOINTMENT AFTER SEPTEMBER 1, 1970, AND PERSONS EMPLOYED FOR SEASONAL EMPLOYMENT PURSUANT TO SECTION 802(d) OF THE CHARTER;
- g. FIRE EMPLOYEES HIRED PRIOR TO JULY 1, 1976 WHO WILL REMAIN MEMBERS OF THE CITY OF OAKLAND FIRE AND POLICE RETIREMENT SYSTEM AND WHO DID NOT WAIVE THEIR RIGHTS UNDER THAT PLAN AS OF OCTOBER 13, 2001 AND

- h. POLICE EMPLOYEES HIRED PRIOR TO JULY 1, 1976 WHO WILL REMAIN MEMBERS OF THE CITY OF OAKLAND FIRE AND POLICE RETIREMENT SYSTEM AND WHO DID NOT WAIVE THEIR RIGHTS UNDER THAT PLAN AS OF JUNE 21, 2003.**
6. Permanent part-time employees hired prior to September 1, 1970 were excluded from membership in the Public Employees' Retirement System prior to July 4, 1981 because they were not eligible for membership in the Oakland Municipal Employees' Retirement System and could not execute a waiver of rights pursuant to paragraph 5.a. of this contract. This exclusion shall not apply to those employees in employment of public agency on or after July 4, 1981.
  7. Assets heretofore accumulated with respect to miscellaneous members under the local retirement system who waived their rights under that system on April 9, 1973, January 10, 1976, July 4, 1981 and June 19, 2004, have been transferred to the Public Employees' Retirement System and applied against the liability for prior service incurred thereunder. That portion of assets so transferred which represent the accumulated contributions (plus interest thereof) required of the employees under said local system have been credited to the individual membership account of each such employee under the Public Employees' Retirement System.
  8. Assets heretofore accumulated with respect to fire members under the local retirement system who waived their rights under that system on October 13, 2001, have been transferred to the Public Employees' Retirement System and applied against the liability for prior service incurred thereunder. That portion of assets so transferred which represent the accumulated contributions (plus interest thereof) required of the employees under said local system have been credited to the individual membership account of each such employee under the Public Employees' Retirement System.
  9. Assets heretofore accumulated with respect to police members under the local retirement system who waived their rights under that system on June 21, 2003, have been transferred to the Public Employees' Retirement System and applied against the liability for prior service incurred thereunder. That portion of assets so transferred which represent the accumulated contributions (plus interest thereof) required of the employees under said local system have been credited to the individual membership account of each such employee under the Public Employees' Retirement System.

PLEASE DO NOT SIGN "EXHIBIT ONLY"

10. Public Agency and the Redevelopment Agency of the City of Oakland have agreed to a merger of their contracts, and this contract shall be a continuation of the benefits of the contract of the Redevelopment Agency of the City of Oakland, pursuant to Section 20567.6 of the Government Code. Such merger is effective as of December 28, 1975. Public Agency, by this contract, assumes the assets and liabilities accumulated under the former contract of the Redevelopment Agency of the City of Oakland. Legislation repealed said Section effective January 1, 1988.
  - a. The optional provisions of Section 21354 shall apply to all past service for former employees of the Redevelopment Agency of the City of Oakland.
11. The percentage of final compensation to be provided for each year of credited prior and current service as a local miscellaneous member in employment before and not on or after June 19, 2004 shall be determined in accordance with Section 21354 of said Retirement Law (2% at age 55 Full).
12. The percentage of final compensation to be provided for each year of credited prior and current service as a local miscellaneous member in employment on or after June 19, 2004 shall be determined in accordance with Section 21354.5 of said Retirement Law (2.7% at age 55 Full).
13. The percentage of final compensation to be provided for each year of credited prior and current service as a local safety member shall be determined in accordance with Section 21362.2 of said Retirement Law (3% at age 50 Full).
14. Public Agency elected and elects to be subject to the following optional provisions:
  - a. Sections 21624, 21626 and 21628 (Post-Retirement Survivor Allowance).
  - b. Section 21536 (Local System Service Credit Included in Basic Death Benefit) for local miscellaneous members only.
  - c. Section 20042 (One-Year Final Compensation).
  - d. Section 21573 (Third Level of 1959 Survivor Benefits) for local fire members only.
  - e. Section 21024 (Military Service Credit as Public Service).
  - f. Section 20431 ("Local Police Officer" shall include city jail, detention or correctional facility employees as described in Government Code Section 20431).

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- g. Section 20434 ("Local Fire Fighter" shall include any officer or employee of a fire department employed to perform firefighting, fire prevention, fire training, hazardous materials, emergency medical services, or fire or arson investigation services as described in Government Code Section 20434).
- h. Section 21023.5 (Public Service Credit for Peace Corps, AmeriCorps VISTA, or AmeriCorps Service).
- i. Section 20965 (Credit for Unused Sick Leave) for local fire members only.
- j. Section 20903 (Two Years Additional Service Credit).
- k. Section 21024.5 (Public Service Credit for Career Federal/State Firefighter Service).
- l. Section 20516 (Employees Sharing Cost of Additional Benefits):

Section 21362.2 (3% @ 50 Full formula) for local fire members.

From and after the effective date of this amendment to contract the fire employees of Public Agency shall be assessed an additional 4% of their compensation for a total contribution rate of 13% pursuant to Government Code Section 20516.

- 15. Public Agency, in accordance with Government Code Section 20790, ceased to be an "employer" for purposes of Section 20834 effective on October 4, 1975. Accumulated contributions of Public Agency shall be fixed and determined as provided in Government Code Section 20834, and accumulated contributions thereafter shall be held by the Board as provided in Government Code Section 20834.
- 16. Public Agency shall contribute to said Retirement System the contributions determined by actuarial valuations of prior and future service liability with respect to local miscellaneous members and local safety members of said Retirement System.
- 17. Public Agency shall also contribute to said Retirement System as follows:
  - a. Contributions required per covered member on account of the 1959 Survivor Benefits provided under Section 21573 of said Retirement Law. (Subject to annual change.) In addition, all assets and liabilities of Public Agency and its employees shall be pooled in a single account, based on term insurance rates, for survivors of all local fire members.

- b. A reasonable amount, as fixed by the Board, payable in one installment within 60 days of date of contract to cover the costs of administering said System as it affects the employees of Public Agency, not including the costs of special valuations or of the periodic investigation and valuations required by law.
  - c. A reasonable amount, as fixed by the Board, payable in one installment as the occasions arise, to cover the costs of special valuations on account of employees of Public Agency, and costs of the periodic investigation and valuations required by law.
18. Contributions required of Public Agency and its employees shall be subject to adjustment by Board on account of amendments to the Public Employees' Retirement Law, and on account of the experience under the Retirement System as determined by the periodic investigation and valuation required by said Retirement Law.
19. Contributions required of Public Agency and its employees shall be paid by Public Agency to the Retirement System within fifteen days after the end of the period to which said contributions refer or as may be prescribed by Board regulation. If more or less than the correct amount of contributions is paid for any period, proper adjustment shall be made in connection with subsequent remittances. Adjustments on account of errors in contributions required of any employee may be made by direct payments between the employee and the Board.

B. This amendment shall be effective on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

BOARD OF ADMINISTRATION  
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

CITY COUNCIL  
CITY OF OAKLAND

BY \_\_\_\_\_  
LORI MCGARTLAND, CHIEF  
EMPLOYER SERVICES DIVISION  
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

BY \_\_\_\_\_  
PRESIDING OFFICER

\_\_\_\_\_  
Witness Date

Attest:

\_\_\_\_\_  
Clerk

FILED  
INTRODUCED BY CLERK  
OFFICE OF THE CLERK  
OAKLAND

2009 OCT 15 PM 3:19

APPROVED AS TO FORM AND LEGALITY



City Attorney

**OAKLAND CITY COUNCIL**  
**ORDINANCE No. \_\_\_\_\_ C.M.S.**

**ORDINANCE OF THE CITY OF OAKLAND AUTHORIZING AMENDMENTS TO THE CONTRACT BETWEEN THE CITY OF OAKLAND AND THE BOARD OF ADMINISTRATION OF THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM (CALPERS) THAT PROVIDE 1) SERVICE CREDIT FOR PRIOR FEDERAL OR STATE FIREFIGHTING IN A POSITION WHOSE PRINCIPAL DUTIES CONSIST OF ACTIVE FIRE SUPPRESSION OR LAW ENFORCEMENT AND IN WHICH THAT SERVICE WAS TERMINATED AS A DIRECT CONSEQUENCE OF THE CLOSURE, DOWNSIZING, OR REALIGNMENT OF A FEDERAL MILITARY INSTALLATION, IN ACCORDANCE WITH GOVERNMENT CODE SECTION 21024.5 AND 2) LOCAL FIRE MEMBERS TO SHARE THE COST OF THE THREE PERCENT AT FIFTY (3% @ 50) RETIREMENT FORMULA AT THE RATE OF FOUR PERCENT (4%) OF THE CITY'S CONTRIBUTION, IN ACCORDANCE WITH GOVERNMENT CODE SECTION 20516**

**WHEREAS**, on July 28, 2009, the City Council approved a Memorandum of Understanding between the City of Oakland and the International Association of Firefighters, Local 55, pursuant to Resolution No. 82241 C.M.S.; and

**WHEREAS**, Article 9, Section 9.3.7 of said Memorandum of Understanding provides that upon notification by Local 55 that its members have ratified this Agreement, the City shall begin the process to amend its contract with PERS to adopt the credit for prior public service described in and provided for by Government Code Section 21024.5, with the benefit coming effective upon CalPERS approval; and

**WHEREAS**, Article 9, Section 9.4 of said Memorandum of Understanding states, in part, that as permitted by Section 414(h)(2) and Government Code Section 20516 each unit member shall pay through payroll deductions 4.0% of the employer's contribution; and

**WHEREAS**, implementation of Article 9, Sections 9.3.7 and 9.4 require an amendment to the contract between the City of Oakland and the Board of Administration of the California Public Employees' Retirement System; now, therefore

**THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:**

**Section 1.** That an amendment to the contract between the City of Oakland and the Board of Administration of the California Public Employees' Retirement System is hereby authorized, a copy of said amendment being attached hereto, marked Exhibit 1, and by such reference made a part hereof as though herein set out in full.

**Section 2.** The President of the Council is hereby authorized, empowered and directed to execute said amendment for and on behalf of the City of Oakland.

**Section 3.** The effective date of this Ordinance shall be immediate if at least six Council Members vote in favor of the Ordinance, otherwise, it will take effect on the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_

**PASSED BY THE FOLLOWING VOTE:**

AYES- BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT BRUNNER

NOES-

ABSENT-

ABSTENTION-

ATTEST: \_\_\_\_\_

LaTonda Simmons  
City Clerk and Clerk of the Council  
of the City of Oakland, California

DATE OF ATTESTATION: \_\_\_\_\_





**EXHIBIT**  
**1**

California  
Public Employees' Retirement System

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**AMENDMENT TO CONTRACT**

Between the  
Board of Administration  
California Public Employees' Retirement System  
and the  
City Council  
City of Oakland

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The Board of Administration, California Public Employees' Retirement System, hereinafter referred to as Board, and the governing body of the above public agency, hereinafter referred to as Public Agency, having entered into a contract effective September 1, 1970, and witnessed June 5, 1972, and as amended effective April 9, 1973, October 4, 1975, January 10, 1976, July 1, 1976, July 4, 1981, July 30, 1983, December 6, 1985, January 1, 1988, June 30, 1992, September 25, 1993, July 1, 1996, June 14, 2000, July 7, 2001, October 13, 2001, June 21, 2003, June 19, 2004, July 2, 2005 and June 3, 2009 which provides for participation of Public Agency in said System, Board and Public Agency hereby agree as follows:

- A. Paragraphs 1 through 19 are hereby stricken from said contract as executed effective June 3, 2009, and hereby replaced by the following paragraphs numbered 1 through 19 inclusive:
1. All words and terms used herein which are defined in the Public Employees' Retirement Law shall have the meaning as defined therein unless otherwise specifically provided. "Normal retirement age" shall mean age 55 for local miscellaneous members and age 50 for local safety members.

PLEASE DO NOT SIGN "EXHIBIT ONLY"

2. Public Agency shall participate in the Public Employees' Retirement System from and after September 1, 1970 making its employees as hereinafter provided, members of said System subject to all provisions of the Public Employees' Retirement Law except such as apply only on election of a contracting agency and are not provided for herein and to all amendments to said Law hereafter enacted except those, which by express provisions thereof, apply only on the election of a contracting agency.
3. Public Agency agrees to indemnify, defend and hold harmless the California Public Employees' Retirement System (CalPERS) and its trustees, agents and employees, the CalPERS Board of Administration, and the California Public Employees' Retirement Fund from any claims, demands, actions, losses, liabilities, damages, judgments, expenses and costs, including but not limited to interest, penalties and attorneys fees that may arise as a result of any of the following:
  - (a) Public Agency's election to provide retirement benefits, provisions or formulas under this Contract that are different than the retirement benefits, provisions or formulas provided under the Public Agency's prior non-CalPERS retirement program.
  - (b) Public Agency's election to amend this Contract to provide retirement benefits, provisions or formulas that are different than existing retirement benefits, provisions or formulas.
  - (c) Public Agency's agreement with a third party other than CalPERS to provide retirement benefits, provisions, or formulas that are different than the retirement benefits, provisions or formulas provided under this Contract and provided for under the California Public Employees' Retirement Law.
  - (d) Public Agency's election to file for bankruptcy under Chapter 9 (commencing with section 901) of Title 11 of the United States Bankruptcy Code and/or Public Agency's election to reject this Contract with the CalPERS Board of Administration pursuant to section 365, of Title 11, of the United States Bankruptcy Code or any similar provision of law.
  - (e) Public Agency's election to assign this Contract without the prior written consent of the CalPERS' Board of Administration.

PLEASE DO NOT SIGN "EXHIBIT ONE"

- (f) *The termination of this Contract either voluntarily by request of Public Agency or involuntarily pursuant to the Public Employees' Retirement Law.*
  - (g) *Changes sponsored by Public Agency in existing retirement benefits, provisions or formulas made as a result of amendments, additions or deletions to California statute or to the California Constitution.*
4. Employees of Public Agency in the following classes shall become members of said Retirement System except such in each such class as are excluded by law or this agreement:
- a. Local Fire Fighters hired for the first time as Fire Fighters on or after July 1, 1976 and those Fire Fighters prior to July 1, 1976 who waived their rights as of October 13, 2001.
  - b. Local Police Officers hired for the first time as police Officers on or after July 1, 1976 and those Police Officers prior to July 1, 1976 who waived their rights as of June 21, 2003.
  - c. Employees other than local safety members (herein referred to as local miscellaneous members).
5. In addition to the classes of employees excluded from membership by said Retirement Law, the following classes of employees shall not become members of said Retirement System:
- a. **MISCELLANEOUS EMPLOYEES, OTHER THAN ELECTIVE OFFICERS WHO ENTERED PUBLIC AGENCY SERVICE PRIOR TO SEPTEMBER 1, 1970 AND WHO HAVE NOT EXECUTED AND FILED, IN ACCORDANCE WITH RESOLUTIONS OF THE CITY COUNCIL A WAIVER OF RIGHTS UNDER THE OAKLAND MUNICIPAL EMPLOYEES' RETIREMENT SYSTEM PRIOR TO SEPTEMBER 1, 1970, OR IN THE PERIODS FEBRUARY 15, 1973 THROUGH MARCH 15, 1973, INCLUSIVE, OR NOVEMBER 24, 1975 THROUGH DECEMBER 19, 1975, INCLUSIVE, OR MAY 15, 1981 THROUGH JUNE 15, 1981, INCLUSIVE. THE EXCLUSION OF A MEMBER EXECUTING AND FILING SUCH WAIVER IN THE PERIOD MAY 15, 1981, THROUGH JUNE 15, 1981, INCLUSIVE, SHALL CEASE AND HIS MEMBERSHIP SHALL BE EFFECTIVE ON JULY 4, 1981 AND THOSE EMPLOYEES WHO DID NOT WAIVE THEIR RIGHTS AS OF JUNE 19, 2004;**

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- b. THE PROVISION OF PARAGRAPH 5.a. SHALL ALSO APPLY TO INDIVIDUALS HIRED PRIOR TO SEPTEMBER 1, 1970 WHO TERMINATED EMPLOYMENT WITH THE PUBLIC AGENCY, LEFT CONTRIBUTIONS ON DEPOSIT WITH OAKLAND MUNICIPAL EMPLOYEES' RETIREMENT SYSTEM, AND ARE MEMBERS OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM;
- c. THE PROVISION OF PARAGRAPH 5.a. SHALL NOT APPLY TO EMPLOYEES OF PUBLIC AGENCY HIRED AFTER JULY 4, 1981, AS TO FUTURE SERVICE. SUCH EMPLOYEES MAY EXECUTE A WAIVER OF RIGHTS UNDER THE OAKLAND MUNICIPAL EMPLOYEES' RETIREMENT SYSTEM WITHIN 30 DAYS OF NOTICE BY LOCAL AGENCY OF RIGHT TO EXECUTE A WAIVER AND WILL RECEIVE SERVICE CREDIT IN THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM FOR LOCAL SYSTEM SERVICE UPON PAYMENT OF CONTRIBUTIONS WITHDRAWN FROM THE LOCAL SYSTEM UNDER THE PROVISIONS OF GOVERNMENT CODE SECTION 20523 OR UPON TRANSFER OF MEMBER CONTRIBUTIONS FROM THE LOCAL SYSTEM UNDER THE PROVISIONS OF GOVERNMENT CODE SECTION 20530;
- d. MEMBERS OF BOARDS AND COMMISSIONS APPOINTED BY THE MAYOR OR THE CITY COUNCIL;
- e. EMPLOYEES AND MEMBERS OF THE BOARD OF EDUCATION;
- f. PERSONS EMPLOYED ON PROVISIONAL APPOINTMENTS, PURSUANT TO CITY OF OAKLAND CHARTER SECTION 803, OTHER THAN CITY OF OAKLAND EMPLOYEES WHO ARE MEMBERS OF PERS AND ACCEPT SUCH APPOINTMENT AFTER SEPTEMBER 1, 1970, AND PERSONS EMPLOYED FOR SEASONAL EMPLOYMENT PURSUANT TO SECTION 802(d) OF THE CHARTER;
- g. FIRE EMPLOYEES HIRED PRIOR TO JULY 1, 1976 WHO WILL REMAIN MEMBERS OF THE CITY OF OAKLAND FIRE AND POLICE RETIREMENT SYSTEM AND WHO DID NOT WAIVE THEIR RIGHTS UNDER THAT PLAN AS OF OCTOBER 13, 2001 AND

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- h. POLICE EMPLOYEES HIRED PRIOR TO JULY 1, 1976 WHO WILL REMAIN MEMBERS OF THE CITY OF OAKLAND FIRE AND POLICE RETIREMENT SYSTEM AND WHO DID NOT WAIVE THEIR RIGHTS UNDER THAT PLAN AS OF JUNE 21, 2003.**
6. Permanent part-time employees hired prior to September 1, 1970 were excluded from membership in the Public Employees' Retirement System prior to July 4, 1981 because they were not eligible for membership in the Oakland Municipal Employees' Retirement System and could not execute a waiver of rights pursuant to paragraph 5.a. of this contract. This exclusion shall not apply to those employees in employment of public agency on or after July 4, 1981.
  7. Assets heretofore accumulated with respect to miscellaneous members under the local retirement system who waived their rights under that system on April 9, 1973, January 10, 1976, July 4, 1981 and June 19, 2004, have been transferred to the Public Employees' Retirement System and applied against the liability for prior service incurred thereunder. That portion of assets so transferred which represent the accumulated contributions (plus interest thereof) required of the employees under said local system have been credited to the individual membership account of each such employee under the Public Employees' Retirement System.
  8. Assets heretofore accumulated with respect to fire members under the local retirement system who waived their rights under that system on October 13, 2001, have been transferred to the Public Employees' Retirement System and applied against the liability for prior service incurred thereunder. That portion of assets so transferred which represent the accumulated contributions (plus interest thereof) required of the employees under said local system have been credited to the individual membership account of each such employee under the Public Employees' Retirement System.
  9. Assets heretofore accumulated with respect to police members under the local retirement system who waived their rights under that system on June 21, 2003, have been transferred to the Public Employees' Retirement System and applied against the liability for prior service incurred thereunder. That portion of assets so transferred which represent the accumulated contributions (plus interest thereof) required of the employees under said local system have been credited to the individual membership account of each such employee under the Public Employees' Retirement System.

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10. Public Agency and the Redevelopment Agency of the City of Oakland have agreed to a merger of their contracts, and this contract shall be a continuation of the benefits of the contract of the Redevelopment Agency of the City of Oakland, pursuant to Section 20567.6 of the Government Code. Such merger is effective as of December 28, 1975. Public Agency, by this contract, assumes the assets and liabilities accumulated under the former contract of the Redevelopment Agency of the City of Oakland. Legislation repealed said Section effective January 1, 1988.
  - a. The optional provisions of Section 21354 shall apply to all past service for former employees of the Redevelopment Agency of the City of Oakland.
11. The percentage of final compensation to be provided for each year of credited prior and current service as a local miscellaneous member in employment before and not on or after June 19, 2004 shall be determined in accordance with Section 21354 of said Retirement Law (2% at age 55 Full).
12. The percentage of final compensation to be provided for each year of credited prior and current service as a local miscellaneous member in employment on or after June 19, 2004 shall be determined in accordance with Section 21354.5 of said Retirement Law (2.7% at age 55 Full).
13. The percentage of final compensation to be provided for each year of credited prior and current service as a local safety member shall be determined in accordance with Section 21362.2 of said Retirement Law (3% at age 50 Full).
14. Public Agency elected and elects to be subject to the following optional provisions:
  - a. Sections 21624, 21626 and 21628 (Post-Retirement Survivor Allowance).
  - b. Section 21536 (Local System Service Credit Included in Basic Death Benefit) for local miscellaneous members only.
  - c. Section 20042 (One-Year Final Compensation).
  - d. Section 21573 (Third Level of 1959 Survivor Benefits) for local fire members only.
  - e. Section 21024 (Military Service Credit as Public Service).
  - f. ~~Section 20431 ("Local Police Officer" shall include city jail, detention or correctional facility employees as described in Government Code Section 20431).~~

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- g. Section 20434 ("Local Fire Fighter" shall include any officer or employee of a fire department employed to perform firefighting, fire prevention, fire training, hazardous materials, emergency medical services, or fire or arson investigation services as described in Government Code Section 20434).
- h. Section 21023.5 (Public Service Credit for Peace Corps, AmeriCorps VISTA, or AmeriCorps Service).
- i. Section 20965 (Credit for Unused Sick Leave) for local fire members only.
- j. Section 20903 (Two Years Additional Service Credit).
- k. Section 21024.5 (Public Service Credit for Career Federal/State Firefighter Service).
- l. Section 20516 (Employees Sharing Cost of Additional Benefits):  
Section 21362.2 (3% @ 50 Full formula) for local fire members.

From and after the effective date of this amendment to contract the fire employees of Public Agency shall be assessed an additional 4% of their compensation for a total contribution rate of 13% pursuant to Government Code Section 20516.

- 15. Public Agency, in accordance with Government Code Section 20790, ceased to be an "employer" for purposes of Section 20834 effective on October 4, 1975. Accumulated contributions of Public Agency shall be fixed and determined as provided in Government Code Section 20834, and accumulated contributions thereafter shall be held by the Board as provided in Government Code Section 20834.
- 16. Public Agency shall contribute to said Retirement System the contributions determined by actuarial valuations of prior and future service liability with respect to local miscellaneous members and local safety members of said Retirement System.
- 17. Public Agency shall also contribute to said Retirement System as follows:
  - a. Contributions required per covered member on account of the 1959 Survivor Benefits provided under Section 21573 of said Retirement Law. (Subject to annual change.) In addition, all assets and liabilities of Public Agency and its employees shall be pooled in a single account, based on term insurance rates, for survivors of all local fire members.

- b. A reasonable amount, as fixed by the Board, payable in one installment within 60 days of date of contract to cover the costs of administering said System as it affects the employees of Public Agency, not including the costs of special valuations or of the periodic investigation and valuations required by law.
- c. A reasonable amount, as fixed by the Board, payable in one installment as the occasions arise, to cover the costs of special valuations on account of employees of Public Agency, and costs of the periodic investigation and valuations required by law.

18. Contributions required of Public Agency and its employees shall be subject to adjustment by Board on account of amendments to the Public Employees' Retirement Law, and on account of the experience under the Retirement System as determined by the periodic investigation and valuation required by said Retirement Law.

19. Contributions required of Public Agency and its employees shall be paid by Public Agency to the Retirement System within fifteen days after the end of the period to which said contributions refer or as may be prescribed by Board regulation. If more or less than the correct amount of contributions is paid for any period, proper adjustment shall be made in connection with subsequent remittances. Adjustments on account of errors in contributions required of any employee may be made by direct payments between the employee and the Board.

B. This amendment shall be effective on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

BOARD OF ADMINISTRATION CITY COUNCIL  
PUBLIC EMPLOYEES' RETIREMENT SYSTEM CITY OF OAKLAND

BY \_\_\_\_\_  
LORI MCGARTLAND, CHIEF  
EMPLOYER SERVICES DIVISION  
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

BY \_\_\_\_\_  
PRESIDING OFFICER

Witness, Date \_\_\_\_\_

Attest \_\_\_\_\_

\_\_\_\_\_  
Clerk